

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTEL, INC.,

Plaintiff,

-v-

WWW.POWER-WHEELS-OUTLET.COM,
WWW.POWERWHEELS-SALE.COM,
WWW.POWERWHEEL-US.SHOP,

Defendants.

21 Civ. 8108 (PAE) (GWG)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

On September 24, 2021, plaintiff Mattel, Inc. (“Mattel”) filed this suit, bringing claims of trademark counterfeiting, trademark infringement, false designation, and cybersquatting under 15 U.S.C. §§ 1114(1), 1116(d), 1117, 1225, and 1051 *et seq.*, against defendants www.Power-wheels-outlet.com, www.Powerwheels-sale.com, and www.powerwheel-us.shop. Dkts. 1 (order authorizing filing under seal), 7 (unsealed Complaint). On October 1, 2021, this Court granted Mattel’s motion for emergency relief and issued a temporary restraining order, an order restraining defendants’ websites and assets; an order to show cause why a preliminary injunction should not issue; an order authorizing bifurcated and alternative service; and an order authorizing expedited discovery. *See* Dkts. 3 (“TRO”), 15 (unsealed TRO). On October 15, 2021, the Court converted the TRO into a preliminary injunction and unsealed the case. Dkts. 5, 6. On November 10, 2021, Mattel obtained a certificate of default as to all defendants from the Clerk of Court. Dkt. 19. On December 15, 2021, Mattel filed a motion for default judgment and a memorandum of law and exhibits in support. Dkts. 22–25. On January 3, 2022, the Court granted Mattel’s motion and referred the case to the Hon. Gabriel W. Gorenstein, United States Magistrate Judge, for an inquest into damages. Dkts. 27–29.

Before the Court now is the July 22, 2022 Report and Recommendation of Judge Gorenstein, recommending that the Court award Mattel statutory damages in the amount of \$500,000—\$125,000 per infringed mark per type of good—and post-judgment interest at the statutory rate from the date that final judgment is entered to the date the judgment is satisfied pursuant to 28 U.S.C. § 1961. Dkt. 38 (“Report”). The Court incorporates by reference the summary of the facts provided in the Report. For the following reasons, the Court adopts the Report’s recommendation.

DISCUSSION

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).


As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Gorenstein’s thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that “the parties have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file any objections” and that “[i]f a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal.” Report at 12. *See Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604

(2d Cir. 2008) (citing *Small v. Sec'y of Health & Hum. Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court adopts the Report and awards Mattel statutory damages in the amount of \$500,000 and post-judgment interest at the statutory rate from the date that final judgment is entered to the date the judgment is satisfied pursuant to 28 U.S.C. § 1961. The Clerk of Court is directed to close this case.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: August 8, 2022
New York, New York